

Docket JP919990715US1

Appl. No.: 09/438,645
Filed: November 12, 1999**REMARKS**

Applicant thanks Examiner for pointing out informalities in the drawings and claims. Corrections of these informalities are herein submitted.

Drawing Amendments

FIG. 4 is corrected herein to show connection of application server 104 to database servers 106 that was inadvertently omitted in the version of FIG. 4 mailed to the USPTO on 1/23/03.

In the version of FIG. 5 which was mailed to the USPTO on 1/23/03, the "pre-runtime" block referred to with element number "120" in the specification and on the previous version of FIG. 5 was incorrectly labeled "102." FIG. 5 is corrected herein to correct the pre-runtime block element number to read "120."

Claim Amendments Addressing Objections under 35 USC 112

In claim 2 an amendment is herein submitted to remove the phrase "of the transactions" as noted in the marked up claim set above. Arguably there is antecedent basis for the phrase, since the claim states that "a live map includes i) identification of a *transaction* for actual processing" and states that a first collection of a *number* of such live maps is formed on a client. However, upon reflection the phrase seems awkward. Further, it seems unnecessary since it is not needed until the term "a plurality of said transactions" is later introduced in the claim.

Also in claim 2, further review revealed a duplicate word error regarding "server" in step c), which is herein corrected in the marked up claim set above.

Regarding claim 10, there was a discrepancy between the claim in the clean set of claims and in the marked up set previously submitted. Attorney regrets the discrepancy and thanks the Examiner for pointing out this inadvertent error. Claim 10 submitted herein, including the amendment thereto, is based on an understanding that the previously submitted clean version of the claim was what was intended.

Further for claim 10, the Office Action points out that in the version submitted in the last Response to Office Action there was a lack of antecedent basis for the terms "the first server" and "said client emulation server." Correction is herein submitted as noted in the marked up claim set above. It was intended that, and amendment is herein submitted to reflect that, after its initial

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introduction the "client emulation server" is referred to as the "client" in claim 10 and its dependent claims.

Remarks Regarding Objection to Claim 14 under 35 USC 112

The Office Action objects to claim 14 on the basis that there is no description of the client storing a performance data file. It is assumed that the confusion described above about the terms "client" and "client emulation server" in claim 10 have led to this objection, since the specification states that "... performance criteria . . . can be determined by the server under test 102 itself, or can be determined on the client emulation server . . . Whichever way, the results of the performance testing are stored in a Logging File 515.1 on the client emulation server or the server under test Logging File 515.2." Specification, page 7 lines 14 through 19 (as amended in the previous response to Office action to add element numbers). Applicants contend that the amendment to claim 10 addresses this issue, so that the objection to claim 14 has been overcome.

Remarks Regarding Claim Rejections Under 35 USC 102 and 103

Applicant's amended the claims in the last Response in an effort to fully respond to the rejections in the previous Office Action. The present Office Action acknowledges certain limitations in the broad claims of the present case, but Applicant's respectfully contend that the limited reach of the teaching of the Wang reference and the bounds of the claims in the present case have not been given due consideration. Claim 2 in the present case, for example, now states that "the chosen computing application of the transaction for such a live map is the same for each of the live maps in the collection" and then "changing the number of said live maps and types of said transactions in the first collection of live maps transmitted to said server," etc. This is more than just a client sending transactions to a server, as disclosed by Wang and as is well known. Furthermore, the teaching of Wang regarding a client sending transactions to a server combined with a possible mere chance happenstance of all the transactions coincidentally being for a single computing application does not anticipate or obviate what is claimed in the present application. The present case teaches and claims that the client deliberately forms a *homogeneous* collection of live maps, that is, a collection in which all the live maps are for the same computing application, the performance responsive to the collection is measured, and then the client

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deliberately forms another homogeneous collection with a changed number of live maps, etc.
The art of record does not teach or even suggest this.

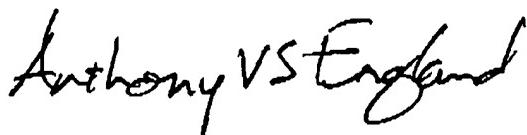
REQUESTED ACTION

If Examiner does not allow the above claims, Attorney *hereby requests a telephone interview* to discuss the case. The Office Action has been considered and Applicants respectfully maintain that the pending claims, as amended herein to correct informalities, are allowable over the art of record.

Applicants request entry of the above amendments to narrow issues for appeal. *However, Attorney is hopeful that in a telephone interview Examiner's concerns can be more clearly explored, patentable distinctions can be articulated and agreement might be reached as to allowable claim language.*

Attorney can be contacted at the telephone number below, or Examiner may wish to contact Attorney by e-mail at the address below if necessary to schedule an interview.

Respectfully submitted,



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Attachments: Drawings, Sheets 3 of 4, and 4 of 4